IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.35966 of 2023

K.Sridevi ... Petitioner

Vs.

1. HDFC ERGO General Insurance Company Limited,
Rep. by its Authorized Person,
R.R Tower 2, 2nd Floor,
No.94/95, T.V.K.Industrial Estate,
Guindy, Chennai-600 032.

2. HDFC Bank Ltd.,
Rep. by its Authorized Person,
R.R Tower 2, 2nd Floor,
No.94/95, T.V.K.Industrial Estate,
Guindy, Chennai-600 032.

3. Insurance Regulatory And Development Authority Of India,
Rep. by its Authorized Person,
Gate No.3, Jeevan Tara Building,
First Floor, Sansad Marg,
New Delhi-110 001. ... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the 1st respondent herein to claim petition dated 12.06.2021 made by the petitioner in the respect of Insurance Policy availed by the petitioner's husband in policy

No. 29992021717844O1000 dated 30.04.2019, without insisting for any further documentations or particulars.

For Petitioner : Mr.S.Vellidoss

For Respondents : Ms.Bhargavi Gopalan (for R1);

No Appearance (for R2);

Mr.M.B.Raghavan for
M/s.M.B.Gopalan Associates (for R3).

ORDER

The writ petition has been instituted to settle the claim of the writ petitioner based on the insurance policy.

2. The insurance policy, its terms and conditions are contractual in nature. Such claim petitions require an adjudication with reference to documents and evidences available on record.

3. The learned counsel for the respondent would submit that an alternate remedy is available to the petitioner before the State Consumer Disputes Redressal Forum constituted under the Act. Admittedly, the petitioner has not exhausted the alternate remedy provided under the statute.

4. This court is of the considered opinion that exhausting the alternate remedy before approaching the High Court under Article 226 of the Constitution is the rule. Entertaining a writ petition by dispensing with the alternate remedy is an exception. Therefore, if the alternate remedy is efficacious, then the parties have to be relegated to exhaust the remedy before approaching the Writ Court.

5. The factual findings of the appellate authority and the statutory body are of greater assistance to the High Court for the purpose of exercise of the powers of judicial review in an effective manner. In the absence of any such factual findings, there is a possibility of miscarriage of justice. Merely based on the certain x-erox copies filed before the writ court, the claim petitions relating to contractual obligations cannot be decided. The parties have to establish their respective cases based on the documents and evidenced if required through oral evidences. Such a process contemplated under the statute, at no circumstances be dispensed with in a routine manner. The importance of exhausting the alternate remedy cannot be undermined since the factual findings are of paramount importance.

6. In the present case, the petitioner seeks settlement of claim based on the policy. Therefore, the petitioner is at liberty to approach the State Consumer Disputes Redressal Forum as constituted under the statute, which is an efficacious remedy for redressal of her grievances.

7. In the even of filing any such application before the State Consumer Disputes Redressal Forum, the period during which the writ petition was pending before the High Court is to be taken into consideration for the purpose of condoning the delay, if any.

8. With these liberties, the writ petition stands dismissed. However, there shall be no order as to costs.

02.04.2024

Index : Yes
Speaking Order
Neutral Citation : Yes
(sha)

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S.M.SUBRAMANIAM. J.,

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